

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD D. BRAXTON,

Defendant-Appellant.

UNPUBLISHED

July 8, 2003

No. 232830

Wayne Circuit Court

LC No. 00-004785

Before: Cooper, P.J., and Sawyer and Murphy, JJ.

COOPER, P.J. (*dissenting*).

I respectfully dissent from the majority's opinion affirming defendant's convictions. After reviewing *People v Duncan*, 462 Mich 47, 51; 610 NW2d 551 (2000), and *People v Allen*, 466 Mich 86, 91-92; 643 NW2d 227 (2002), I believe that structural error of the type presented in this case clearly mandates reversal despite defendant's failure to preserve these issues for appellate review.

The trial court's remark in the jury's presence regarding defendant's incarceration was clearly improper and prejudicial. However, if this isolated remark was the only error in defendant's trial I would tend to agree with the majority that reversal is unwarranted. A review of the record indicates that the trial court made several egregious errors during the course of defendant's trial that require reversal of the convictions.

The most grievous error occurred when the trial court provided the jury with an improper definition of reasonable doubt. The trial court instructed the jury that a reasonable doubt consisted of "[a] doubt that [the jury] should have . . . a reason for having." The majority apparently agrees that this definition is erroneous, but ultimately concludes that the error did not prejudice the defendant. In its opinion, the majority attempts to circumvent the fact that structural error has occurred in this case by performing a plain error analysis. However, case law suggests that the initial inquiry in this instance should be whether or not the error is of constitutional import. *People v Watkins*, 247 Mich App 14, 16-17, 20; 634 NW2d 370 (2001). If it is constitutional error, the next inquiry is whether the error is structural or non-structural. *Duncan*, *supra* at 51; *Watkins*, *supra* at 16-17, 20. If the error is structural we never reach a

plain error analysis. Rather, our Supreme Court has clearly determined that if constitutional error is structural, reversal is automatic. *Duncan, supra* at 51.¹

According to the Michigan Supreme Court, a trial court is not obligated to define the concept of reasonable doubt for the jury. *People v Allen*, 466 Mich 86, 91-92; 643 NW2d 227 (2002).² However, when the trial court chooses to provide such an instruction, the definition *must be accurate*. *Id.* at 90-91. An improper definition of reasonable doubt is necessarily considered structural error and is not subject to the harmless error analysis:

[T]he essential connection to a “beyond a reasonable doubt” factual finding cannot be made where the instructional error consists of a misdescription of the burden of proof, which vitiates *all* the jury’s findings. A reviewing court can only engage in pure speculation—its view of what a reasonable jury would have done. And when it does that, “the wrong entity judge[s] the defendant guilty.” [*Sullivan v Louisiana*, 508 US 275, 281; 113 S Ct 2078; 124 L Ed 2d 182 (1993) (emphasis in original; citation omitted).]

As noted in *Watkins, supra* at 26, “[a] structural error is intrinsically harmful regardless of the effect on the outcome and denies a defendant basic protections without which a trial cannot reliably serve as a vehicle for determining guilt or innocence.” Once a trial court provides the jury a deficient reasonable doubt instruction, reviewing courts may not assume that the jury actually found a defendant guilty beyond a reasonable doubt. *Allen, supra* at 92. Thus, the trial court’s improper reasonable doubt instruction in the instant case clearly violated defendant’s constitutional guarantee to a jury trial. *Id.* at 90, 92.

To hold that an improper reasonable doubt instruction does not seriously affect the fairness, integrity, or public reputation of judicial proceedings is ludicrous. Such error attacks the very foundation of the court system. See *Duncan, supra* at 57. Moreover, if an issue can never be considered reversible error in the face of “overwhelming” evidence, the judicial system has essentially exempted criminal defendants from the right to due process of law. In order to preserve the integrity of the courts, we must give due process more than mere lip service. This case is a clear example of an unpreserved constitutional error that requires reversal.

This error is further compounded by the trial court’s instruction that the jury had a duty to convict defendant if it failed to find a reasonable doubt. Indeed, when a prosecutor argues that a

¹ I note that similar to the instant case, *Duncan* involved an unpreserved constitutional error that the Court determined amounted to structural error and required reversal. *Duncan, supra* at 50, 57. While *Duncan* does discuss harmless error, I would emphasize that it also specifically states that its holding is consistent with *Carines*. *Id.* at 54. It further provides that a trial court’s complete failure to provide an instruction on the elements of an offense was a “structural defect affecting the *very framework* of the trial process.” *Id.* at 57 (emphasis added).

² In *Allen, supra*, the Court addressed the issue of structural error in the face of an unpreserved claim of alleged constitutional error where the trial court wholly failed to define the term reasonable doubt. While the Court ultimately determined that the trial court’s omission did not amount to error, it nevertheless conducted an in-depth analysis of structural error. *Id.* at 90, 92.

jury is duty bound to convict a defendant, such action is regarded as error. See *People v Cooper*, 236 Mich App 643; 601 NW2d 409 (1999). The prejudice is even greater when a neutral court instructs a jury that it has such a duty.

Furthermore, the trial court's instruction concerning defendant's alibi defense was inaccurate. The jury was instructed that it must convict defendant if it rejected his claim that he was not present at the scene of the crime. In this manner, the trial court effectively minimized the prosecution's burden of proving each element of the offense beyond a reasonable doubt. See *People v Gaydosh*, 203 Mich App 235, 238-239; 512 NW2d 65 (1994). This error prejudiced defendant because it permitted the jury to find him guilty on the basis of his mere presence.

The combined effect of all of these blatantly erroneous instructions clearly tainted the jury's verdict. The trial court made several glaring errors in this case and succeeded in flouting defendant's fundamental right to a fair and impartial trial by jury. These are precisely the types of actions that this Court must address in order to preserve the integrity and fairness of the judicial system for all citizens.

Accordingly, I would reverse defendant's convictions and remand for a new trial.

/s/ Jessica R. Cooper